

When persons sell tangible personal property which they are not otherwise engaged in selling, such transactions may be occasional sales not subject to ROT. See 86 Ill. Adm. Code 130.110. (This is a PLR.)

May 4, 1999

Dear Mr. Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter that we received on October 2, 1998, and the subsequent information you provided at our meeting on April 20, 1999. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request.

In your letter, you have stated and made inquiry as follows:

This is a request for a private letter ruling under the provisions of 2 Illinois Administrative Code Section 1200.110 on behalf of COMPANY and BUSINESS. The request is being made on behalf of both parties to the transaction because a determination that the sale between the parties is an isolated or occasional sale will exempt COMPANY from Retailers' Occupation Tax and BUSINESS from Use Tax. Powers of attorney are attached.

1. COMPANY and BUSINESS have disclosed their identities and described the business transactions between them to fully comply with the requirements of 2 Illinois Administrative Code Section 1200.110. This request is made on behalf of COMPANY and BUSINESS for a determination of each purchaser's Use Tax liability and the Retailers' Occupation Tax liability of COMPANY, the seller of the aircraft.
2. This Private Letter Ruling is sought to apply to the present period and future periods.
3. There is no claim to be filed and this issue is not under audit by the Department.
4. Neither COMPANY nor BUSINESS has previously requested a letter ruling from the Department regarding the application of the isolated or occasional sale exemption to the sale of an aircraft between them.
5. COMPANY and BUSINESS specifically request that all information identifying the parties, including the aircraft be deleted from the published version of the letter which will be available to the public.

6. COMPANY and BUSINESS are both incorporated in the State of STATE.

Statement of Facts

In July of 1997, COMPANY agreed to purchase a Gulfstream G-V aircraft. COMPANY will pay cash for the Gulfstream. The terms of the final transaction may include a trade-in of another aircraft. Since that time, the aircraft has been built in Georgia, title has transferred and the aircraft has been delivered to COMPANY in Georgia, but it has not been finally accepted by COMPANY. It is presently undergoing final outfitting by Gulfstream in California. The aircraft is registered with the FAA. The registration tail number is #####. COMPANY is now planning to sell the aircraft to BUSINESS a wholly owned subsidiary.

COMPANY is not a retailer and is not in the business of selling aircraft at retail, it is a holding company. COMPANY acquired the aircraft to transport its employees and the employees of its affiliated companies as an incident to its general business operations. COMPANY decided for business and liability purposes to consolidate the aviation resources of its affiliated companies into a single corporate entity. The sale of the aircraft to BUSINESS is in furtherance of this business objective.

BUSINESS, one of a number of subsidiaries of COMPANY, was recently formed to be a flight service and operations company. BUSINESS will own and operate two Gulfstream aircraft under the authority of Section 91.501, Subpart F of the Federal Aviation Regulations. BUSINESS will provide aviation services on a for hire basis to the members of the COMPANY affiliated group of companies. These aviation services will be provided nationwide as well as internationally.

The aircraft has not and will not be operated in or over Illinois before it is sold to BUSINESS. After the sale to BUSINESS, which will take place in a State other than Illinois, BUSINESS will bring the aircraft to Illinois. It will be hangered at and operated from AIRPORT in CITY, Illinois. The aircraft will be registered with the FAA and the FAA certificate of registration will be filed with the Illinois AGENCY. BUSINESS will also own and operate another Gulfstream aircraft which will be hangered in STATE2.

Rulings Requested

1. COMPANY requests a ruling that its purchase of the aircraft from Gulfstream in Georgia and its use of the aircraft outside of Illinois is not subject to the Illinois Use Tax. COMPANY is a STATE corporation. The aircraft has not and will not be operated in or over Illinois while it is owned by COMPANY. The aircraft is currently located in California. The FAA registration reflects COMPANY's corporate address in STATE2.

2. COMPANY requests a ruling that its sale and delivery of the aircraft to BUSINESS outside of Illinois is not subject to Illinois Retailers' Occupation Tax. The sale is an isolated or occasional sale by COMPANY and delivery of the property to BUSINESS will not occur in Illinois.
3. BUSINESS requests a ruling that its purchase of the aircraft from COMPANY will qualify as an isolated or occasional purchase in Illinois and that the aircraft will be exempt from the Illinois Use Tax and any otherwise applicable local use taxes when the aircraft is brought to Illinois and registered.

Authority

35 ILCS 105/2 and 35 ILCS 120/1 exempt: 'The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail...'

86 Illinois Administrative Code 130.110

'(a) Since the Act does not impose a tax upon persons who are not engaged in the business of selling tangible personal property, persons who make isolated or occasional sales thereof do not incur tax liability.'

86 Illinois Administrative Code, Section 150.101.

'(c) However, if the seller of tangible personal property for use would not be taxable under the Retailers' Occupation Tax Act despite all elements of the sale occurring in Illinois, then the tax imposed by the Use Tax Act shall not apply to the use of such tangible personal property in this state.'

'(d) For example, a purchaser of tangible personal property from a seller who qualifies as an isolated or occasional seller so as not to incur Retailers' Occupation Tax liability is not liable for the Use Tax when using such property in Illinois.'

Trans-Air Corporation v. Department of Revenue, 86 Ill. App 3d 750 (1980)

Letter Rulings: 86-0592, 87-0737, 88-0039, 90-0093, 90-0662, 91-618, 91-0739, 94-0272, 95-0138, 95-0296 and 97-0236

Contrary Authority

COMPANY and BUSINESS are unaware of any Illinois authority contrary to the position that the sale of the aircraft to BUSINESS would qualify as an exempt occasional sale.

Argument

The Department, as evidenced by the above listed letter rulings, has long recognized the applicability of the isolated or occasional sale exemption to aircraft. This recognition has also extended to transactions between a parent and subsidiary. COMPANY is not a retailer and is not in the business of selling aircraft at retail. Therefore, the sale of the Gulfstream to BUSINESS qualifies as an occasional sale which is exempt from the Illinois Use Tax. The fact that BUSINESS is one of a number of subsidiaries of COMPANY does not alter the application of the occasional sale exemption. There is a valid business purpose for the sale and the courts in Illinois have long regarded transactions between a parent corporation and a subsidiary corporation as transactions between separate legal entities.

If you anticipate issuing a Private Letter Ruling which does not agree with the rulings requested, I would appreciate the opportunity to meet with you to discuss the issues in greater detail before a ruling is issued.

Please call me at ##### if you have any questions.

Please be advised Section 3 of the Illinois Use Tax Act states in part that:

"A tax is imposed upon the privilege of using in this state tangible personal property purchased at retail from a retailer . . ." 35 ILCS 105/3 (emphasis added).

Section 1 of the Retailers' Occupation Tax Act states in part that:

"The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail, . . . does not constitute engaging in a business of selling such tangible personal property at retail within the meaning of this Act. ." 35 ILCS 120/1.

Because of this statutory provision, persons (as defined in the ROT Act) do not incur Retailers' Occupation Tax liabilities upon gross receipts from such occasional sales and purchasers do not incur Use Tax liabilities. See 86 Ill. Adm. Code 130.110, enclosed.

Consequently, purchasers of tangible personal property from sellers who qualify as isolated or occasional sellers so as not to incur Retailers' Occupation Tax liability are not liable for the Use Tax when using such property in Illinois. See 86 Ill. Adm. Code 150.101(d).

As a general proposition, the occasional sale exemption is only available when a person purchases an item of tangible personal property with the intention of using the item and then, after using the item, disposes of it by selling it. Please refer to 86 Ill. Adm. Code 130.110. When a person purchases an item of tangible personal property with the intent of reselling it to a purchaser for use or

consumption, that person engages in conduct equivalent to holding himself out as a retailer. This makes the initial purchase a sale for resale and the subsequent sale is a taxable sale at retail subject to Illinois Retailers' Occupation and Use Tax liabilities. See 86 Ill. Adm. Code 130.201 and 130.210. An infrequent number of such sales does not transform them into occasional sales because the original objective of purchasing the item for resale to a purchaser for use or consumption establishes that the purpose of the sales transactions are resale (initial transaction) and retail (subsequent transaction).

We conclude the sale of the aircraft from COMPANY to BUSINESS outside of Illinois can qualify as an isolated or occasional sale that is not subject to Retailers' Occupation Tax on the part of COMPANY or Use Tax on the part of BUSINESS. We reach this conclusion by applying the above principles to the representations you have made in your letter and at our meeting. We note in particular that you represent that when COMPANY purchased the plane from Gulfstream, it did so with the intent to use the plane itself and it did not purchase the plane with the intent to resell it to BUSINESS or anyone else. So long as that was the case, the occasional sale exemption is available. If that was not the case, the occasional sale exemption is not available and BUSINESS will incur Illinois and local Use Tax liabilities when it brings the plane to Illinois. Further, if COMPANY were to purchase another aircraft and resell it to BUSINESS, COMPANY will be functioning as a retailer and that sale would be subject to Retailers' Occupation and Use Tax liabilities.

Again, this letter ruling is based on the facts presented to us. If an Illinois tax auditor or other Department employee were to discover that the facts are not as you represent, the aircraft could be subject to tax in Illinois.

I hope this information is helpful. If you have further questions, please feel free to contact the Department.

Very truly yours,

Karl Betz
Associate Counsel

KWB:msk
Enc.